

Revised Texas  
Franchise Tax



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# Franchise Tax Filing Update 2010

Presented by:  
Franchise Tax Policy  
Comptroller of Public Accounts



# Franchise Legislation – 81<sup>st</sup> Session

➤ **HB 469**

Establishes incentives for carbon dioxide sequestration. It is limited to three projects implemented in connection with the construction of a new facility and requires approval from the Railroad Commission. While this legislation is effective September 1, 2009, the Comptroller may not issue a credit until after September 1, 2013.

➤ **HB 1474**

Exempts bingo units from the franchise tax. Units are defined in the Occupations Code and include units formed by licensed entities. Eligible entities must submit an application for exemption (AP-204). Effective October 1, 2009.

➤ **SB 636**

Provides an exclusion from total revenue for payments made to persons providing services, labor or materials in connection with the provision of destination management services, as defined by Section 151.0565. This generally will not apply to a travel agent or agency. This provision is effective for reports originally due on or after January 1, 2010.



# Franchise Legislation – 81<sup>st</sup> Session

➤ **HB 4611**

Allows lending institutions to report gross proceeds of sales of loans or securities for apportionment purposes if they are treated as “securities available for sale” or “trading securities” under FAS 115. Effective for reports originally due on or after January 1, 2010.

➤ **SB 1442**

Revises the Business Organizations Code to require all taxable entities to provide a tax clearance letter before dissolution, reinstatement, etc. Effective September 1, 2009.

➤ **HB 4765**

Increases the no tax due threshold from \$300,000 to \$1 million effective for reports originally due in 2010 and 2011. The threshold is \$600,000 for reports originally due on or after January 1, 2012. No discounts for 2010 and 2011. Discounts are adjusted accordingly once the \$600,000 threshold is in effect.

# No Tax Due Report (05-163)

## ➤ Item 2

The NTD threshold for 2010 and 2011 is \$1 million in annualized total revenue. For 2008 & 2009, it was \$300,000 and for 2012 forward it will be \$600,000.

## ➤ Item 4

If you are a real estate investment trust and meet the criteria in 171.0002(c)(4), then you are considered a “non-taxable” entity for the period upon which the tax is based. You must also complete and submit the applicable information report.

**If any of the statements below are true, you qualify to file this No Tax Due Information Report:**  
**(Blacken all circles that apply)**

1. **This entity is a passive entity as defined in Chapter 171 of the Texas Tax Code.** (See instructions) 1. ■ ☐  
(Passive income does NOT include rent)
2. **This entity's annualized total revenue is below the no tax due threshold.** (See instructions) 2. ■ ☐
3. **This entity has zero Texas Gross Receipts.** 3. ■ ☐
4. **This entity is a Real Estate Investment Trust (REIT) that meets the qualifications specified in section 171.0002(c)(4).** 4. ■ ☐
- 5a. **Accounting year begin date** 5a. ■  5b. **Accounting year end date** 5b. ■
6. **TOTAL REVENUE** (Whole dollars only) 6. ■

# No Tax Due Report (05-163)

## ➤ Combined Groups

May file a NTD report for 2010 forward. An affiliate schedule MUST be included with a NTD report along with appropriate information reports.

TAE S A X Comptroller of Public Accounts FORM		05-163 (9-09/3)	TEXAS FRANCHISE TAX NO TAX DUE INFORMATION REPORT				Print Form	
■ Tcode 13255 Annual								
■ Taxpayer number		■ Report year		Due date		Privilege period covered by this report		
<input type="text"/>		2010		05/17/2010		01/01/2010 — 12/31/2010		
Taxpayer name						Secretary of State file number or Comptroller file number		
Mailing address								
City		State		Country		ZIP Code Plus 4		
						Blacken circle if the address has changed ■ <input type="radio"/>		
Blacken circle if this is a combined report ■ <input type="radio"/>				SIC code		NAICS code		
Blacken circle if Total Revenue is adjusted for Tiered Partnership Election, see instructions. ■ <input type="radio"/>								
Blacken circle if this is a Corporation or Limited Liability Company <input type="radio"/>				Blacken circle if this is an Entity other than a Corporation or Limited Liability Company <input type="radio"/>				



# No More Initial Reports!

The crazy dates required by Texas law for filing initial franchise tax reports are gone!

Entities that became subject to the Texas franchise tax on or after 10/04/2009 will no longer be required to file an initial franchise tax report.

Instead the entity will file a first annual report that will be due on May 15 in the year following the first date it became subject to the franchise tax.

## Examples:

A Texas entity was formed on 12/15/2009. It has a 12/31 accounting year end. Its first Texas franchise tax report will be due on May 17, 2010 and will cover the period 12/15/2009 – 12/31/2009.

A Delaware entity, with a 6/30 accounting year end, opened an office in Texas on October 14, 2009. Its first Texas franchise tax report will be due on May 17, 2010. Since it did not have an accounting year end during 2009 that was after its beginning date for Texas franchise tax, the entity will file a NTD report and will use 10/14/2009 through 10/14/2009 as its accounting period. Its 2011 franchise tax report will use the accounting period 10/14/2009 through 6/30/2010.

See the October 2009 issue of Tax Policy News for more information at:  
<http://www.window.state.tx.us/taxinfo/taxpnw/tpn2009/tpn910.html#issue2>



# Information Reports – Who must file?

ALL taxable entities EXCEPT passive entities and affiliates of a combined group that DO NOT have nexus in Texas.

## **Public Information Report** **(05-102)**

- Corporations
- Limited liability companies
- Banking Corporation
- Savings & Loan association
- REITS\*\* that qualify as non-taxable under 171.0002(c)(4)

## **Ownership Information Report** **(05-167)**

- Partnerships (GPs, LPs, and LLPs)
- Trusts
- Associations – business or professional
- Joint Ventures

\*\* REITS will generally be legally organized as corporations, but in some cases may actually be trusts. REITS legally organized as trusts should file the Ownership Information Report (05-167).



# E-Z Computation

An alternative to computing margin for taxpayers whose total revenue is \$10 million or less.

**Total Revenue**

**X Apportionment Factor**

**Apportioned Revenue**

**X 0.00575 (0.575% rate)**

**Tax Due before discounts**

Notes:

- E-Z Computation is on form 05-169
- See Rule 3.584 and TTC 171.1016 for additional information.



# E-file vs. WebFile

Texas does NOT have **E-file** capability...yet! We have **WebFile**!

WebFile is available for all franchise tax reports. When you sign into WebFile, you will be able to select the forms packet you want to file. The packets are dynamic in nature and all the forms you need will automatically be added as you enter information. The packets include:

➤ **Extension Request**

05-164 Extension Request  
05-165 Extension Affiliate List

➤ **Long Form Report**

05-158-A Franchise Tax Report Page 1  
05-158-B Franchise Tax Report Page 2  
05-160 Credits Summary Schedule  
05-102 Public Information Report  
05-167 Ownership Information Report  
05-170 Payment Form  
05-166 Affiliate schedule  
05-175 Tiered Partnership Report

➤ **No Tax Due**

05-163 No Tax Due Information Report  
05-102 Public Information Report  
05-167 Ownership Information Report  
05-166 Affiliate Schedule  
05-175 Tiered Partnership Report

➤ **EZ Computation**


05-169 EZ Computation Report  
05-102 Public Information Report  
05-167 Ownership Information Report  
05-170 Payment Form  
05-166 Affiliate Schedule  
05-175 Tiered Partnership Report

# WebFile Requirements

## Before You Begin:

- Determine which forms you must file. If you have any problems opening the Smart .PDF/WebFile forms, please visit our forms help page.
- You will need to have your Texas taxpayer ID number and WebFile number to login for the first time.
- For all the report forms, you will need to know the SIC code and NAICS code for your business entity.

TEXAS COMPTROLLER of PUBLIC ACCOUNTS  
WWW.WINDOW.STATE.TX.US



Taxpayer ID number

X-----X  
X-----X  
X-----X  
X-----X  
X-----X

WebFile number

X-----X  
X-----X  
X-----X  
X-----X  
X-----X

Taxpayer number	
File number	
WebFile number	
Report year	Due date

**Franchise Tax Annual Report Filing Notice**

You are receiving this notice because our records show this entity has its annual Texas franchise tax report due on the date shown above. The franchise tax is imposed on most legal entities, including partnerships, that are formed in Texas or that do business in Texas.

**Per Texas tax law, you must file a franchise tax report, including the appropriate information report, even if no tax is due.** Information about which forms to file is available online at [www.window.state.tx.us/taxinfo/franchise/whichforms.html](http://www.window.state.tx.us/taxinfo/franchise/whichforms.html).

# SIC & NAICS



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## Texas Taxes

**Filing and Paying**  
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[Tax Requirements for Secretary of State Filings](#)  
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P.O. Boxes for Tax Reports  
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### Texas Franchise Tax

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**Revised Texas Franchise Tax**  
The Texas franchise tax is a privilege tax imposed on each taxable entity chartered/organized in Texas or doing business in Texas.

**web file** Online Tax Filing **GO>>**  
Electronic Reporting and Paying

#### External Links

- Statutes
- Rules - Revised rules begin with Rule
- NAICS Codes**
- SIC Codes

**Franchise Tax Webinars Scheduled!**  
During the four sessions, "Texas Franchise Tax Filing Update 2010", we'll focus on giving you information to help you file successfully in 2010. Please join us!

Links to SIC and NAICS

<http://www.window.state.tx.us/taxinfo/franchise/>



# WebFile requirements, cont'd

If filing the report electronically, no signature is required. Electronic submission is considered a signed document. If you filed electronically, please **do not** sign and mail the print copy.

If you are filing your report after the due date and you owe tax, you will need to manually calculate penalty and interest on the tax amount due before submitting payment.

If you are filing a money extension request or owe tax with the report, you will need to click submit after the reports are complete before the [payment options](#) are presented. If you WebFile a report and owe tax, you **MUST** make an online payment.

You have 30 minutes to complete the reports before WebFile times out. If you need more time to complete the reports, please save the forms to your computer. When you are ready, click submit and follow the instructions to log back into WebFile and complete the filing and payment process.

WebFile is available at [http://www.window.state.tx.us/taxinfo/franchise/webfile\\_franchise.html](http://www.window.state.tx.us/taxinfo/franchise/webfile_franchise.html)

## Notes:

- A WebFile confirmation is a “return receipt.” It does not mean that the report processed without any errors.
- Guidance on interest calculations is available at [http://www.window.state.tx.us/taxinfo/int\\_rate.html](http://www.window.state.tx.us/taxinfo/int_rate.html).



# Amending Reports

Franchise tax reports may be amended for the following reasons:

- To correct a mathematical or other error;
- To support a claim for refund; or
- To change the method of computing margin to 70% of total revenue OR if qualified, the E-Z Computation.

The following amendments are NOT allowed after the due date of the report:

- Change from using COGS to compute margin to Compensation;
- Change from Compensation to COGS;
- Change from 70% of Revenue calculation to COGS or Compensation; or
- Change from EZ computation to COGS or Compensation.

How to amend?

- Complete a report with the amended amounts
- Write AMENDED at the top of the first page of the form;
- Enclose a letter explaining the reasons for amendment; and
- Include substantiating documentation.

**Note:** There is NOT an amended form for Texas franchise tax.



# Combined Reporting

- Reporting entity – should remain the same from year to year UNLESS the entity leaves the combined group.
- Affiliates – can change from year to year, so we presume that each affiliate has its own franchise tax filing responsibility for 2010 until they are listed as an affiliate on a 2010 franchise tax report.
- Affiliate list – MUST be filed with an extension request for a combined group. Do NOT file a prior year affiliate list; you must use a 2010 Form 05-165 to have a valid extension for all affiliates!
- Affiliate schedule –
  - Make sure the nexus indicator on the affiliate schedule is the same as the affiliate list that was filed with the extension.
  - Do NOT enter an FEI number for an affiliate if it is the same as the Reporting Entity's FEI number – leave the field blank.
  - Accounting year begin and end date MUST be completed for each affiliate. Accounting period dates for affiliates must fall within the dates on page 1 of the franchise tax report.



# Extensions

**An extension of time to file a franchise tax report is granted if a timely request is made.**

**Most taxpayers will be granted an extension to November 15 with a timely request. They must include with the request:**

- At least 100% of the tax reported as due on the 2009 report or at least 90% of the tax that will be due on the 2010 report.

**Mandatory EFT filers:**

- First extension granted to August 15th.
- Must remit at least 100% of tax reported as due on the 2009 report or at least 90% of the tax that will be due on the 2010 report.
- If a second extension is timely requested, the report is due on or before November 15<sup>th</sup>.
- Must remit any remaining amount of tax that will be due on the 2010 report with the 2<sup>nd</sup> extension request.

**Combined Groups:**

- May not use the 100% payment option if the group has any new members that were not included in the prior years report.
- **MUST** complete a *2010 affiliate list*.

Note: A separate entity that was included in a 2009 combined group report may not use the 100% extension option.



# Total Revenue

## *American Recovery and Reinvestment Act of 2009*

Texas Tax Code Section 171.1011(b) states that revenue is the amount reported on the federal income tax return to the extent the amount complies with federal tax law.

Texas Tax Code Section 171.0001(9) defines the “Internal Revenue Code” as the code “in effect for the federal tax year beginning January 1, 2007, not including any changes made by federal law after that date, and any regulations adopted under that code applicable to that period.

As a result, Section 1231 of the American Recovery and Reinvestment Act of 2009, effective January 1, 2009, which provides for a deferral of recognition of Cancellation of Debt (COD) income will not be allowed when computing total revenue on the 2010 and subsequent franchise tax reports. COD income must be reported for franchise tax purposes in the year it is generated.



# Compensation

## *Consumer Price Index*

Texas Tax Code Section 171.006 requires adjustments, based on the increase or decrease in the Consumer Price Index (CPI), on January 1 of each even-numbered year to:

- (a) the no tax due threshold amount in TTC Section 171.002(d)(2);
- (b) the total revenue levels for the tax discounts in TTC Section 171.0021; and
- (c) the wage limitation per natural person in computing compensation in TTC Section 171.1013(c).

The percentage increase in the applicable CPI during the 2008-09 biennium was 5.5446%.

As a result, the wage and cash compensation limitation is increased from \$300,000 to \$320,000 per natural person (per 12 month period on which margin is based) for the 2010 and 2011 reports.

Note: Due to legislative changes in the no tax due threshold there was no adjustment to the threshold or discounts based on CPI.



# Qualification for 0.5% Tax Rate


- Retail Trade:  
means the activities described in Division G of the 1987 Standard Industrial Classification Manual published by the federal office of Management and Budget.
- Wholesale Trade:  
means the activities described in Division F of the 1987 Standard Industrial Classification Manual published by the federal Office of Management and Budget.

<http://www.osha.gov/pls/imis/sicsearch.html>

Taxable Entities primarily engaged in retail or wholesale trades will qualify to use the 0.5% tax rate.

A taxable entity is primarily engaged in retail or wholesale trade only if:

- (1) the total revenue from its activities in retail or wholesale trade is greater than the total revenue from its activities in trades other than the retail and wholesale trades;
- (2) less than 50 percent of the total revenue from activities in retail or wholesale trade comes from the sale of products it produces or products produced by an entity that is part of an affiliated group to which the taxable entity also belongs (this does not apply to Eating & Drinking Places described in Major Group 58 of Division G). A product is not considered to be produced if modifications made to the acquired product do not increase its sales price by more than 10%; and
- (3) the taxable entity does not provide retail or wholesale utilities, including telecommunications services, electricity or gas.



# Temporary Credit for Business Loss Carryforwards

- In order to be eligible to use the temporary credit for business loss carryforwards, a taxable entity must have preserved their right to take the credit in 2008 OR they must have taken the credit on the 2008 report. If the entity did not do either of these things, they are not eligible for the credit at any point during the next 20 years.
- Taxable Entity's MUST file a credit summary schedule (form 05-160) in order to take the temporary credit.
- E-Z filers may not take the temporary credit and may not carryover any amount from the year that E-Z is used.
- The temporary credit will be disallowed if the 2010 franchise tax report is late. A disallowed credit may NOT be used in a subsequent period.
- EFT filers & extensions – Please note that if you request an extension of time to file your report, you have until August 15 to file the report OR request a 2nd extension to November 15. If the report is not filed by August 15 OR the 2nd extension is not requested, the credit will be disallowed.

See Rule 3.594 for additional information.



# Account Status – Changes

**"Temporary Good Standing"** is the status granted all franchise tax accounts during our peak filing period to allow the Comptroller's office sufficient time to process all tax reports. As tax reports are processed, "temporary good standing" will change to either "good standing" or "not in good standing".

**"Good standing"** means an entity has filed its franchise tax report so that a balance due was correctly computed, and that any amount computed to be due has been paid.

An entity can initially be in "good standing" even if there is an error on the Public Information Report, Ownership Information Report, Tiered Partnership Report, or Affiliate Schedule, or if one of these schedules is missing. This change allows time for the entity to resolve these filing errors, without negatively affecting the entity's ability to do business in Texas.

Be aware that an entity with a filing error will be considered in good standing, but still delinquent, until the filing error is resolved. We will promptly send the entity a notice describing the filing error. The entity may also receive a delinquent notice, as required by state law.

If the filing error is not resolved, the entity's right to transact business will be forfeited. At that point, the entity will be "not in good standing".

A Certificate of Account Status cannot be issued to an entity in Temporary Good Standing. Additionally, a Certificate of Account Status will not print from the Comptroller's website if the entity is missing data. If you have an immediate need for a Certificate of Account Status for a private business transaction or to renew a license or permit, please contact our office as soon as possible to get the issue resolved.



# Contact Us

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